

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
East Alabama Lumber Company, Inc)
Lafayette, Chambers County, Alabama)
)
Air Facility ID No. 302-S003)

CONSENT ORDER NO: 25-XXX-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and East Alabama Lumber Company, Inc (“Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, as amended, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended.

STIPULATIONS

1. The Permittee owns and operates a softwood sawmill facility, ADEM Air Facility ID No. 302-S003 (hereinafter, the “Facility”), located at 15204 Highway 431, Lafayette, Chambers County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended.

4. On August 19, 2019, the Department issued Major Source Operating Permit (MSOP) 302-S003 to the Permittee, which authorizes the operation of a 174 MBF direct-fired lumber dry kiln (Emission Unit No. 001), a 184 MBF direct-fired lumber dry kiln (Emission Unit No. 002), a sawmill with a cyclone and two (2) chippers with two (2) cyclones (Emission Unit No. 003), and a planer mill with two (2) cyclones (Emission Unit No. 004).

5. General Permit Proviso No. 9 of the MSOP states, “Any application form, report, test data, monitoring data, or compliance certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

6. Unit Specific Proviso No. 4(a) of Emission Unit No. 003 (Sawmill Operations) requires the Permittee conduct visible emissions observations on the exhaust from each cyclone for the presence of greater than normal visible emissions daily during daylight hours, while the process is operating.

7. Unit Specific Proviso No. 5(a) of Emission Unit No. 003 requires the Permittee maintain records of the required emission monitoring on-site and readily available for inspection for at least five (5) years.

8. On February 1, 2023, the Department issued Air Permit No. X004 to the Permittee for the operation of a Sawmill and Chipper Operations with Two (2) Cyclones.

9. General Permit Proviso No. 9 of Air Permit No. X004 requires the Permittee submit written notification to the Air Division when construction is complete. The notification shall indicate whether the device(s) was constructed as proposed in the application.

10. Unit Specific Proviso No. 4(a) of Air Permit No. X004 requires the Permittee conduct visible emissions observations on the exhaust from each cyclone (CY-1 (sawmill cyclone) and CY-2 (chipper cyclone)) daily during daylight hours, while the process is operating.

11. Unit Specific Proviso No. 5(b) of Air Permit No. X004 requires the Permittee maintain records of the required visible emissions observations on-site.

12. Unit Specific Proviso No. 5(c) of Air Permit No. X004 requires the Permittee to retain records in a permanent form and readily available for inspection for a period of 5 years.

DEPARTMENT'S CONTENTIONS

13. On September 19, 2022, the Department issued a letter of inquiry to the Permittee regarding construction activities observed during an August 31, 2022, inspection of the facility.

14. On October 21, 2022, the Department received the Permittee's response to the letter of inquiry, which stated that the Permittee assumed that no permit application was necessary for the replacement of its sawmill.

15. On September 21, 2022, the Department received an initial Air Permit application from the Permittee for the sawmill reconstruction at the Facility, with a complete application received on November 5, 2022. The application proposed the installation of a sawmill with a cyclone (previously existing) and a chipper with a cyclone.

16. On February 1, 2023, the Department issued Air Permit No. X004 to the Permittee for the construction of the proposed sawmill and chipper operations with two cyclones.

17. On July 19, 2023, Department personnel conducted an inspection of the Facility and noted that visible emissions (VE) observations for the sawmill and planer mill cyclones had not been recorded.

18. On July 28, 2023, the Department received the Permittee's Semi-Annual Monitoring Report (SMR) for the period of January 1, 2023, through June 30, 2023, for the Facility. The SMR listed N/A for daily VE observations for the sawmill cyclone and stated that the sawmill was destroyed in a fire and did not operate during the reporting period. The SMR also stated that the VE observations for the planer mill cyclone were performed during the reporting period but were only recorded during the period of January 1, 2023, through January 26, 2023.

19. On August 18, 2023, the Department issued a Warning Letter to the Permittee for failure to record VE observations for the sawmill and planer mill cyclones.

20. On August 29, 2023, the Department received the Permittee's response to the Warning Letter, which stated that VE observations for the sawmill cyclone were not conducted because the sawmill was destroyed by a fire.

21. On September 6, 2023, the Department issued a response to the Permittee's Warning Letter response, which stated, "Although the sawmill is currently not operational, sawdust is being manually fed into the pneumatic system controlled by the sawmill cyclone. Therefore, visible emissions observations of the sawmill cyclone are still required by the Major Source Operating Permit."

22. On December 20, 2023, the Department received the Permittee's Annual Compliance Certification (ACC) for the period of November 9, 2022, through November 8, 2023. The ACC stated that daily VE observations for the sawmill cyclone were not recorded during the period of November 27, 2022, through August 3, 2023.

23. On February 9, 2024, the Department received the Permittee's SMR, certified by the Responsible Official (RO), for the period of July 1, 2023, through December 1, 2023. The SMR stated that daily VE observations for the sawmill cyclone were conducted during the reporting period but were not recorded prior to August 5, 2023.

24. On March 8, 2024, the Department received a request, signed by the RO, from the Permittee for Temporary Authorization to Operate (TAO). The TAO request stated, “The sawmill was constructed in accordance with the permit application submitted in October 2022.”

25. On March 11, 2024, the Department issued TAO to the Permittee for operation of the sawmill and chipper operation with two cyclones under Air Permit No. X004.

26. On May 29, 2024, Department personnel conducted an inspection of the Facility and noted that the planer mill cyclones’ VE observations were being recorded as one entry instead of separately. VE records for the sawmill cyclone were submitted via email post inspection for the period of March 7, 2024, through May 29, 2024. Records for the chipper cyclone were not provided during the inspection. While on-site, the Department Inspector questioned the location of the chipper cyclone. Personnel at the Facility were unable to verify the presence or location of the chipper cyclone.

27. On July 8, 2024, the Department issued a Notice of Violation to the Permittee regarding the failure to maintain records to comply with the facility’s MSOP and Air Permit requirements.

28. On July 29, 2024, the Department received the Permittee’s SMR, certified by the RO, for the period of January 1, 2024, through June 30, 2024. The SMR stated that VE observations were performed and recorded for the chipper cyclone during the period of March 30, 2024, through June 30, 2024.

29. On August 2, 2024, the Department received the Permittee’s response to the July 8, 2024, NOV, which stated that the chipper cyclone was never installed. The NOV response also stated that the daily VE observations for the sawmill cyclone were not performed during the period of July 19, 2023, through March 6, 2024.

30. On August 19, 2024, the Department issued a follow-up letter to the Permittee's NOV response questioning why the chipper operations were not constructed as proposed in the application; why the Permittee certified that the chipper operations were constructed as proposed in the March 8, 2024, TAO request; why the Permittee certified in the July 9, 2024, SMR that VE observations were conducted on the chipper cyclone that was never installed; and why the Permittee certified in the February 9, 2024, SMR that VE observations were performed on the sawmill cyclone, yet the July 9, 2024, SMR and the August 2, 2024, NOV response both state that the sawmill cyclone VE observations were not performed or recorded prior to March 7, 2024.

31. On September 17, 2024, the Department received the Permittee's response to the August 19, 2024, follow-up letter, which stated that the facility decided that it was more cost efficient to auger, via enclosed conveyer, the chips from the chipper directly to the loadout bins instead of installing a cyclone. The response also indicated that miscommunication between the Permittee and Layton Environmental is the cause of inaccurate certifications of the TAO request and SMRs. These certifications were signed by the Responsible Official.

32. The violations subject to this Consent Order are as follows: certification of inaccurate information by the Responsible Official on the February 9, 2024, SMR; certification of inaccurate information by the Responsible Official in the March 8, 2024, TAO request; certification of inaccurate information by the Responsible Official in the July 29, 2024, SMR; and failure to conduct visible emissions observations.

33. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to

minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Permittee failed to conduct VE observations on the sawmill in accordance with the Facility's Major Source Operating Permit. The Permittee's RO certified inaccurate information in the TAO request; the February 9, 2024, SMR; and the July 29, 2024, SMR. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory requirements and Permit conditions by failing to conduct required VE observations and by the RO certifying the truth and accuracy of false information.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefit the Permittee may have gained as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no further previous history of violations with the Department relative to this matter.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

33. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (*See* "Attachment A", which is hereby incorporated into the Department's Contentions).

34. The Department neither admits nor denies the Permittee's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

35. The Permittee neither admits nor denies the Department's Contentions. By entering into this Consent Order without adjudication of law, fact, or liability, the Permittee makes no admission of liability for any violation of statute or regulation. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the

Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay the Department a civil penalty in the amount of \$20,000.00 for the violations cited herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3, its Major Source Operating Permit, and its Air Permit No. X004 immediately upon the effective date of this Order and continuing every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department

may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Site which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing, signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

EAST ALABAMA LUMBER COMPANY
INC


(Signature of Authorized Representative)

Vicki Massingill
(Printed Name)

Treasurer
(Printed Title)

Date Signed: 11/11/24

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date Executed: _____

ATTACHMENT A

East Alabama Lumber Company, Inc Lafayette, Chambers County, AL

| Violation* | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violations* | |
|---------------------------------------------------|-----------------------|---------------------------|-------------------|---------------------------------|-------------------------------|
| Inaccurate certification | 3 | \$9,000 | \$6,000 | \$0 | |
| Failure to conduct visible emissions observations | 1 | \$3,000 | \$2,000 | \$0 | |
| | | | | | Total of Three Factors |
| TOTAL PER FACTOR | | \$12,000 | \$8,000 | \$0 | \$20,000 |

| | |
|---------------------------------------------------------|--|
| Adjustments to Amount of Initial Penalty | |
| Mitigating Factors (-) | |
| Ability to Pay (-) | |
| Other Factors (+/-) | |
| Total Adjustments (+/-) <i>Enter at Right</i> | |

| | |
|----------------------------------|----------|
| Economic Benefit (+) | \$0 |
| Amount of Initial Penalty | \$20,000 |
| Total Adjustments (+/-) | |
| FINAL PENALTY | \$20,000 |

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.